

1 Paul Swen Prior  
Nevada Bar No. 9324  
2 Charles E. Gianelloni  
Nevada Bar No. 12747  
3 SNELL & WILMER L.L.P.  
3883 Howard Hughes Parkway, Suite 1100  
4 Las Vegas, Nevada 89169  
Telephone: 702.784.5200  
5 Facsimile: 702.784.5252  
Email: [sprior@swlaw.com](mailto:sprior@swlaw.com)  
6 Email: [cgianelloni@swlaw.com](mailto:cgianelloni@swlaw.com)

7 *Attorneys for Plaintiff*  
8 *BOA Technology, Inc.*

9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF NEVADA

11 BOA TECHNOLOGY, INC.,  
12 Plaintiff,  
13 vs.  
14 NORTHWAVE S.R.L., and  
15 HAWLEY, LLC,  
16 Defendant.

Case No.

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**JURY TRIAL DEMANDED**

17  
18 Plaintiff Boa Technology, Inc., by and through its attorneys, brings this Complaint for  
19 patent infringement of United States Patent Nos. 5,934,599 and 6,202,953, and alleges as follows:

20 **PARTIES**

21 1. Plaintiff Boa Technology, Inc. ("Boa") is a corporation incorporated under the  
22 laws of the State of Delaware, with its principal place of business at 3459 Ringsby Court, Suite  
23 300, Denver, CO 80216.

24 2. Defendant Northwave S.r.l. ("Northwave") is an Italian company with its principal  
25 place of business at Via Levada, 145, 31040 Onigo di Pederobba, Treviso, Italy.

26 3. Defendant Hawley, LLC ("Hawley") is a company incorporated under the laws of  
27 the State of South Carolina, with its principal place of business at 1181 South Lake Drive,  
28 Lexington, SC 29073. Hawley's West Coast Distribution Center, one of two distribution centers

1 Hawley maintains in the United States, is located in this District at 650 Vista Boulevard, Sparks,  
 2 NV 89434. Upon information and belief, Hawley is the sole and official distributor for  
 3 Northwave products in the United States, including the specific infringing products at issue in this  
 4 Complaint.

#### 5 JURISDICTION AND VENUE

6 4. Boa brings this civil action for patent infringement pursuant to the Patent Laws of  
 7 the United States, 35 U.S.C. § 1 *et. seq.* This Court has subject matter jurisdiction over this  
 8 action pursuant to 28 U.S.C. §§ 1331 and 1338. Venue is proper in this district under 28 U.S.C.  
 9 §§ 1391 and 1400(b).

10 5. This Court has personal jurisdiction over Defendants because Northwave and  
 11 Hawley have purposefully availed themselves of the privilege of conducting business within the  
 12 State of Nevada and this District and have invoked the benefits and protections of the laws of the  
 13 State of Nevada. Each Defendant regularly conducts business within this District and each  
 14 Defendant has committed acts of patent infringement within this judicial district, including but  
 15 not limited to placing infringing products into the stream of commerce under circumstances such  
 16 that each Defendant reasonably should have anticipated being subject to suit in this District. The  
 17 Court also has personal jurisdiction over each of the Defendants because the acts of patent  
 18 infringement alleged in this Complaint are aimed at this District and/or have effect in this District,  
 19 and Boa's causes of action arise directly from Defendants' contacts and other activities in the  
 20 State of Nevada and this District.

21 6. For instance, Defendants have previously exhibited their products, including the  
 22 specific infringing products at issue in this Complaint, at the Interbike convention held at the  
 23 Mandalay Bay Convention Center, Las Vegas, NV, 89119, and have contracted again with  
 24 Interbike/Emerald Expositions, Inc. to obtain exhibit space at the upcoming Interbike convention,  
 25 to be held September 10-12, 2014, also at the Mandalay Bay Convention Center in Las Vegas, as  
 26 shown in the attached **Exhibit A**. Upon information and belief, that contract was negotiated and is  
 27 to be performed, at least in part, in this State and this District. Defendants have further conducted  
 28 significant business in the State of Nevada and this District through the use, sale, advertisement,

1 and/or offer for sale of various products in Nevada, including the specific infringing products at  
 2 issue in this Complaint, directly and/or through authorized physical and online retail outlets,  
 3 including but not limited to (i) the Interbike convention; (ii) authorized Northwave resellers (as  
 4 described on Northwave's interactive website northwave.com, as shown in **Exhibit B**); (iii)  
 5 hawleyusa.com, Hawley's fully interactive website, as shown in the attached **Exhibit C**; and (iv)  
 6 Hawley's West Coast Distribution Center located at 650 Vista Boulevard, Sparks, NV 89434.

### 7 UNDERLYING FACTS

8 7. Boa is a global leader in the design, development, and production of closure  
 9 systems related to footwear, medical braces, and other equipment.

10 8. Boa was founded in 1998 by Gary R. Hammerslag who is the named inventor on  
 11 U.S. Patent Nos. 5,934,599 and 6,202,953 (collectively, the "Patents-in-Suit").

12 9. In 2001 and 2002, Boa's products entered the mainstream snow sport industry, and  
 13 some of the first boot systems featuring the Boa technology were produced by Vans, K2,  
 14 Northwave, and DC's snowboard divisions respectively.

15 10. In 2003 and 2004, Boa moved into the cycling industry, and Northwave became  
 16 one of Boa's brand partners for its cycling footwear products for one season in 2005.

17 11. In 2005, Boa expanded into the golf industry. Boa's technology subsequently has  
 18 also been integrated into numerous other products, including but not limited to, trail running  
 19 shoes, winter boots, hiking boots, hunting boots, and work boots.

20 12. In 2011, Boa founded its Medical Business Unit, which was opened in order to  
 21 facilitate additional partnerships with respect to medical technologies, including orthopedic and  
 22 prosthetic devices.

23 13. By 2012, Boa technology was used in one third of the world's snowboard boots  
 24 and more than 70 riders in the Tour de France wore shoes utilizing Boa technology.

25 14. On April 2, 2012, Vincent Connolly, Boa's Global Category Manager, had a  
 26 conference call with Alessandro Manzato, Northwave's Research and Development Manager, in  
 27 which they discussed expanding Boa and Northwave's partnership. Mr. Connolly followed up  
 28 with an email to Mr. Manzato on April 4, 2012, continuing their previous discussion and offering

1 to send prototypes of Boa's closure systems for Northwave's internal testing. Included with this  
2 email was Boa's Brand Overview for 2011, which specifically referenced "Boa Technology's  
3 patented high performance closure system" and "the award-winning, patented Boa Closure  
4 System," as shown in **Exhibit D**. The Brand Overview also put Northwave on notice of Boa's  
5 "32 patents issued and pending worldwide" at that time, also shown in **Exhibit D**.

6 15. On June 7, 2012, the parties continued their discussions during a meeting at  
7 Northwave's offices in Italy. Present at this meeting were Mr. Connolly, Jeff Woodward (Boa's  
8 Regional Account Manager), Michele Battocchio (Northwave's Chief Operating Officer), and  
9 Walter Comazzetto (Northwave's Bike Product and Production Manager). During this meeting,  
10 Boa's proprietary and patented closure systems were discussed, including footwear prototypes  
11 being tested by Northwave using a Boa closure system.

12 16. Mr. Connolly corresponded further with Messrs. Battocchio, Comazzetto, and  
13 Manzato on June 15, 2012. In that correspondence, Mr. Connolly further discussed incorporation  
14 of Boa's closure systems in Northwave's snowboard and cycling products. Also attached to this  
15 correspondence was Boa's Brand Overview for 2011 (shown in **Exhibit D**), which expressly  
16 referenced "Boa Technology's patented high performance closure system," "the award-winning,  
17 patented Boa Closure System," and Boa's "32 patents issued and pending worldwide" at that  
18 time.

19 17. In early December 2012, Northwave introduced a winter cycling footwear product,  
20 which incorporated a Boa closure system, to its international distributors.

21 18. Boa and Northwave met again on December 10, 2012, at Northwave's offices in  
22 Italy. Messrs. Manzato, Comazzetto, and Battocchio again attended on behalf of Northwave.  
23 The parties continued discussing incorporation of Boa's proprietary and patented closure system  
24 in new Northwave cycling footwear products.

25 19. On April 3, 2013, the parties held another meeting at Northwave's office in Italy.  
26 Mr. Hammerslag, Boa's founder and the named inventor on the Patents-in-Suit, met with Gianni  
27 Piva (Northwave's owner), along with Messrs. Battocchio, Comazzetto, and Manzato.

28 ///

1 The parties continued to discuss incorporation of Boa's proprietary and patented closure system  
2 in new Northwave cycling and snowboard footwear products.

3 20. Mr. Connolly continued these discussions on a telephone call with Mr. Comazzetto  
4 on April 26, 2013, and subsequently sent a proposal to Mr. Comazzetto on April 28, 2013,  
5 regarding the parties' continued partnership in the cycling and snowboarding industries. This  
6 proposal included a plan for all future Northwave product lines using a dial closure system to  
7 incorporate Boa's proprietary and patented closure system.

8 21. The parties met again on June 18, 2013, at Northwave's office in Italy. Messrs.  
9 Hammerslag and Connolly represented Boa at the meeting, along with Noah Schum (Boa's  
10 Regional Account Manager). Messrs. Battocchio and Comazzetto were in attendance for  
11 Northwave. At the meeting, Northwave indicated that it would continue to use its own  
12 proprietary dial closure system for nearly all its cycling footwear products and that Northwave  
13 would only use Boa's closure system for one winter cycling footwear product. This decision by  
14 Northwave foreclosed a potential partnership with Boa, and subsequent discussions have not  
15 altered the status between the two companies.

#### 16 FIRST CLAIM FOR RELIEF

#### 17 (Infringement of U.S. Patent No. 5,934,599)

18 22. Boa repeats and incorporates by reference each and every allegation contained in  
19 the preceding paragraphs.

20 23. Boa is the owner by assignment of U.S. Patent No. 5,934,599 (the "'599 Patent"),  
21 entitled "Footwear Lacing System," filed on August 22, 1997, and issued on August 10, 1999, to  
22 Gary R. Hammerslag. A true and correct copy of the '599 Patent is attached hereto as **Exhibit E**.

23 24. Defendants are making, using, offering to sell, selling and/or importing into the  
24 United States footwear products, including but not limited to the Northwave Extreme Tech Plus  
25 product depicted in the attached **Exhibit F**, that infringe one or more claims of the '599 Patent.

26 25. Defendants also have actively induced and continue to actively induce  
27 infringement of the '599 Patent under 35 U.S.C. § 271(b) by instructing, assisting, encouraging,  
28 and/or otherwise inducing others, including but not limited to authorized resellers and customers,



1 to use, sell, offer to sell, and/or import into the United States products that infringe one or more  
2 claims of the '599 Patent, including but not limited to the Northwave Extreme Tech Plus line of  
3 footwear products.

4 26. Defendant Northwave became aware of the '599 Patent on or around March 23,  
5 2009, if not earlier. On or around that date, Defendant Northwave received an international prior  
6 art search report in conjunction with Northwave's International Application Number  
7 PCT/EP2008/066089, entitled "A Closing Device for an Item of Sports Footwear," which was  
8 subsequently published as WO 2009/068503 A1. That search report expressly cites application  
9 EP1421867, filed by Bencom S.r.l. on November 24, 2003, entitled "Shoe with Improved Closure  
10 Device," which in turn expressly cites the '599 Patent.

11 27. Defendant Northwave also gained knowledge of the '599 Patent through its  
12 meetings and communications with Boa. During these meetings and communications, Boa  
13 collaborated with Defendant Northwave in developing products involving Boa's patented closure  
14 system. In particular, on April 2, 2012, Boa sent Northwave a presentation which specifically  
15 referenced "Boa Technology's patented high performance closure system" and "the award-  
16 winning, patented Boa Closure System," and explicitly put Northwave on notice of Boa's "32  
17 patents issued and pending worldwide," which included the '599 Patent.

18 28. In light of and despite its knowledge of the Patents-in-Suit, Defendant Northwave  
19 instructed, assisted, encouraged, and/or otherwise induced others, and continues to induce others,  
20 including Defendant Hawley and Northwave's authorized resellers, to use, sell, offer to sell,  
21 and/or import into the United States, products that infringe one or more claims of the '599 Patent,  
22 including but not limited to the Northwave Extreme Tech Plus line of footwear products, with  
23 knowledge that the induced acts constitute infringement of the '599 patent and with the intent that  
24 others, including Defendant Hawley and Northwave's authorized resellers, infringe the '599  
25 Patent by using, selling, offering to sell, and/or importing into the United States infringing  
26 products.

27 29. Upon information and belief, as Northwave's exclusive distributor in the United  
28 States, Defendant Hawley also induces infringement of the '599 Patent by instructing, assisting,

1 encouraging and/or otherwise inducing others, including resellers and other customers, to directly  
 2 infringe the '599 Patent by using, selling, and/or offering to sell products that infringe one or  
 3 more claims of the '599 Patent, with knowledge that the induced acts constitute infringement of  
 4 the '599 Patent.

5 30. Upon information and belief, Defendants' infringement of the '599 Patent has  
 6 been willful and deliberate, entitling Boa to increased damages under 35 U.S.C. § 284 and  
 7 rendering this case "exceptional" within the meaning of 35 U.S.C. § 285.

8 31. The infringement of the '599 Patent by Defendants will continue unless enjoined  
 9 by this Court.

10 32. The infringing activities by Defendants have caused and will continue to cause  
 11 irreparable injury to Boa for which there exists no adequate remedy at law.

## 12 SECOND CLAIM FOR RELIEF

### 13 **(Infringement of U.S. Patent No. 6,202,953)**

14 33. Boa repeats and incorporates by reference each and every allegation contained in  
 15 the preceding paragraphs.

16 34. Boa is the owner by assignment of U.S. Patent No. 6,202,953 (the "'953 Patent"),  
 17 entitled "Footwear Lacing System," filed on June 22, 1999, and issued on March 20, 2001, to  
 18 Gary R. Hammerslag. A true and correct copy of the '953 Patent is attached hereto as **Exhibit G**.

19 35. Defendants are making, using, offering to sell, selling and/or importing into the  
 20 United States footwear products, including but not limited to the Northwave Extreme Tech Plus  
 21 product depicted in the attached **Exhibit F**, that infringe one or more claims of the '953 Patent.

22 36. Defendants also have actively induced and continue to actively induce  
 23 infringement of the '953 Patent under 35 U.S.C. § 271(b) by instructing, assisting, encouraging  
 24 and/or otherwise inducing others, including but not limited to authorized resellers and customers,  
 25 to use, sell, offer to sell, and/or import into the United States products that infringe one or more  
 26 claims of the '953 Patent, including but not limited to the Northwave Extreme Tech Plus line of  
 27 footwear products.

28 ///

1           37. Defendant Northwave became aware of the '953 Patent on or around March 23,  
2 2009, if not earlier. On or around that date, Defendant Northwave received an international prior  
3 art search report in conjunction with Northwave's International Application Number  
4 PCT/EP2008/066089, entitled "A Closing Device for an Item of Sports Footwear," which was  
5 subsequently published as WO 2009/068503 A1. That search report expressly cites application  
6 EP1421867, filed by Bencom S.r.l. on November 24, 2003, entitled "Shoe with Improved Closure  
7 Device," which in turn expressly cites the '953 Patent.

8           38. Defendant Northwave also gained knowledge of the '953 Patent through its  
9 meetings and communications with Boa. During these meetings and communications, Boa  
10 collaborated with Defendant Northwave in developing products involving Boa's patented closure  
11 system. In particular, on April 2, 2012, Boa sent Northwave a presentation which specifically  
12 referenced "Boa Technology's patented high performance closure system" and "the award-  
13 winning, patented Boa Closure System," and explicitly put Northwave on notice of Boa's "32  
14 patents issued and pending worldwide," which included the '953 Patent.

15           39. In light of and despite its knowledge of the Patents-in-Suit, Defendant Northwave  
16 instructed, assisted, encouraged, and/or otherwise induced others, and continues to induce others,  
17 including Defendant Hawley and Northwave's authorized resellers, to use, sell, offer to sell,  
18 and/or import into the United States, products that infringe one or more claims of the '953 Patent,  
19 including but not limited to the Northwave Extreme Tech Plus line of footwear products, with  
20 knowledge that the induced acts constitute infringement of the '953 patent and with the intent that  
21 others, including Defendant Hawley and Northwave's authorized resellers, infringe the '953  
22 Patent by using, selling, offering to sell, and/or importing into the United States infringing  
23 products.

24           40. Upon information and belief, as Northwave's exclusive distributor in the United  
25 States, Defendant Hawley also induces infringement of the '953 Patent by instructing, assisting,  
26 encouraging, and/or otherwise inducing others, including resellers and other customers, to  
27 directly infringe the '953 Patent by using, selling, and/or offering to sell products that infringe  
28



1 one or more claims of the '953 Patent, with knowledge that the induced acts constitute  
2 infringement of the '953 Patent.

3 41. Upon information and belief, Defendants' infringement of the '953 Patent has  
4 been willful and deliberate, entitling Boa to increased damages under 35 U.S.C. § 284 and  
5 rendering this case "exceptional" within the meaning of 35 U.S.C. § 285.

6 42. The infringement of the '953 Patent by Defendants will continue unless enjoined  
7 by this Court.

8 43. The infringing activities by Defendants have caused and will continue to cause  
9 irreparable injury to Boa for which there exists no adequate remedy at law.

#### 10 **DEMAND FOR JURY TRIAL**

11 44. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Boa demands a trial  
12 by jury on all issues triable by a jury.

#### 13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff Boa requests that judgment be entered in its favor and against  
15 Defendants as follows:

16 A. Declaring that Defendants have infringed the Patents-in-Suit;

17 B. Enjoining Defendants, their officers, agents, subsidiaries and employees, and those  
18 in privity or in active concert with them, from further activities that constitute infringement of the  
19 Patents-in-Suit both within the State of Nevada and across the United States;

20 C. Awarding Boa damages in an amount sufficient to compensate it for Defendants'  
21 infringement of the Patents-in-Suit, and ordering that an accounting be had for reasonable  
22 royalties and/or other damages arising out of Defendants' infringement of the Patents-in-Suit,  
23 together with costs, prejudgment, and post-judgment interest;

24 D. Treble the damages awarded under 35 U.S.C. § 284 by reason of Defendants'  
25 willful infringement of the Patents-in-Suit;

26 E. Declaring this case to be "exceptional" under 35 U.S.C. § 285 and awarding Boa  
27 its attorney fees, expenses, and costs incurred in this action; and

28 ///

1 F. Awarding BoA such other costs and further relief as the Court deems just and  
2 proper.

3 Dated: August 15, 2014

SNELL & WILMER L.L.P.

4  
5 By 

6 Paul Swen Prior, Esq.  
7 Charles E. Gianelloni, Esq.  
8 3883 Howard Hughes Parkway, Suite 1100  
9 Las Vegas, Nevada 89169

10 *Attorneys for Plaintiff*  
11 *BOA Technology, Inc.*  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Snell & Wilmer

LLP  
LAW OFFICES  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, Nevada 89169  
702.784.5200